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In re Application of :
WU et al. :
U.S. Application No.: 10/566,150 : DECISION ON PETITION
PCT No.: PCT/US04/24339 :
Int. Filing Date: 28 July 2004 :
Priority Date: 29 July 2003 :
Attorney Docket No.: 26505-526NATL :
For: PROCESS FOR THE SYNTHESIS OF BIARYL :
OXAZOLIDINONES :

This decision is issued in response to applicant's "Petition under 37 CFR 1.181 to Withdraw Holding of Abandonment" dated 04 December 2008. No petition fee is required.

BACKGROUND

On 28 July 2004, applicant filed international application PCT/US04/24339. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 29 January 2006.

On 27 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 25 February 2008, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) informing applicant that an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. Applicant was afforded two months to file the required response and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 07 November 2008, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification of Missing Requirements mailed 25 February 2008 within the time period set therein.

On 04 December 2008, applicant filed "Petition under 37 CFR 1.181 to Withdraw

Holding of Abandonment.” Applicants state in the present petition that the applicant did not receive the Notification of Missing Requirements mailed 25 February 2008.

DISCUSSION

The Manual of Patent Examining Procedure (MPEP) at 711.03(c) and the Official Gazette, at 1156 OG 53, provides the grounds that an Office action was not received:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm.

Applicant has provided a statement that the Form PCT/DO/EO/905 was never received, explained that a search of the file jacket and application contents revealed that the Form PCT/DO/EO/905 had not been received; and included a copy of the relevant docket record. Further, applicant has provided a statement describing the firm's docketing system, however, applicant has not provided a statement that the docketing system is sufficiently reliable. As such, it is not possible to grant applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment.

CONCLUSION

For the reasons detailed above, applicant's petition under 37 CFR 1.181 is **DISMISSED**.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled “Renewed Petition under 37 CFR 1.181.” No additional fee is required. Extensions of time under 37 CFR 1.136(a) are permitted.

Any further correspondence with respect to this matter should be addressed to:
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box
1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the
attention of the Office of PCT Legal Administration.



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